

House File 2436 - Introduced

HOUSE FILE 2436

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 2393)

(SUCCESSOR TO HSB 596)

A BILL FOR

1 An Act relating to real estate appraisal, including by
2 requiring the superintendent of banking to regulate
3 appraisal management companies and supervise the Iowa real
4 estate appraiser board, making penalties applicable, and
5 including effective date provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

APPRAISAL MANAGEMENT COMPANIES

Section 1. NEW SECTION. 543E.1 Short title.

This chapter shall be known and may be cited as the "*Iowa Appraisal Management Company Registration and Supervision Act*".

Sec. 2. NEW SECTION. 543E.2 Purpose and scope.

The purpose of this chapter is to protect the independence and integrity of the appraisal process when an appraisal is provided through an appraisal management company in connection with a consumer credit transaction secured by the principal dwelling of an Iowa consumer or securitization of such a transaction.

Sec. 3. NEW SECTION. 543E.3 Definitions.

Unless the context otherwise requires, the definitions contained in section 543D.2 shall apply to this chapter. In addition, the following definitions shall apply for purposes of this chapter:

1. "*Administrator*" means the superintendent of the division of banking of the department of commerce or the superintendent's designee.

2. "*Appraisal management company*" means a person that oversees an appraiser panel of more than fifteen certified appraisers in this state or twenty-five or more certified or licensed appraisers nationally within a year, and that directly or indirectly performs appraisal management services for creditors or secondary mortgage market participants in connection with consumer credit transactions secured by the principal dwellings of Iowa consumers or securitizations of those transactions.

3. "*Appraisal management company national registry*" means the registry of state-registered appraisal management companies and federally regulated appraisal management companies maintained by the appraisal subcommittee.

4. "*Appraisal management services*" means any of the following:

- 1 *a.* Recruiting, selecting, and retaining appraisers.
- 2 *b.* Contracting with state certified or licensed appraisers
- 3 to perform appraisal assignments.
- 4 *c.* Managing the process of having an appraisal performed,
- 5 including providing administrative services such as receiving
- 6 appraisal orders and appraisal reports, submitting completed
- 7 appraisal reports to creditors and secondary mortgage market
- 8 participants, collecting fees from creditors and secondary
- 9 mortgage market participants for services provided, and paying
- 10 appraisers for services performed.
- 11 *d.* Reviewing and verifying the work of appraisers.
- 12 5. "*Appraisal review*" means developing and communicating an
- 13 opinion under the uniform standards of professional appraisal
- 14 practice review standards regarding the quality of another
- 15 appraiser's work product prepared as part of an appraisal
- 16 assignment. An "*appraisal review*" does not include quality
- 17 control solely to assure an appraisal report is complete, or to
- 18 correct grammatical, typographical, or other similar errors.
- 19 6. "*Appraisal subcommittee*" means the appraisal subcommittee
- 20 of the federal financial institutions examination council.
- 21 7. "*Appraiser*" means a person who holds a certificate as a
- 22 certified real estate appraiser issued under chapter 543D.
- 23 8. "*Appraiser panel*" means a network, list, or roster of
- 24 certified appraisers who are independent contractors with
- 25 an appraisal management company and who have been selected
- 26 and approved by the appraisal management company to perform
- 27 appraisals directly for the appraisal management company or
- 28 for persons that have ordered appraisals through the appraisal
- 29 management company. Appraisers on an appraisal management
- 30 company's appraiser panel may include both appraisers engaged
- 31 to perform one or more appraisals for covered transactions or
- 32 for secondary mortgage market participants in connection with
- 33 covered transactions, and appraisers accepted by the appraisal
- 34 management company for consideration for future appraisal
- 35 assignments for such purposes, as the administrator may further

1 provide by rule.

2 9. "*Associate real estate appraiser*" means a person who is
3 registered with the Iowa real estate appraiser examining board
4 under section 543D.20.

5 10. "*Consumer credit*" means credit offered or extended to a
6 consumer primarily for personal, family, or household purposes.

7 11. "*Controlling person*" means any of the following:

8 a. An owner, officer, or director of an appraisal management
9 company.

10 b. An individual employed, appointed, or authorized by
11 an appraisal management company who has the authority to
12 enter into a contractual relationship with other persons for
13 the performance of appraisal management services and has the
14 authority to enter into agreements with appraisers for the
15 performance of appraisals.

16 c. An individual who possesses, directly or indirectly, the
17 power to direct or cause the direction of the management or
18 policies of an appraisal management company.

19 12. "*Covered transaction*" means any consumer credit
20 transaction secured by the consumer's principal dwelling.

21 13. "*Creditor*" means a person who regularly extends consumer
22 credit that is subject to a finance charge or is payable by
23 written agreement in more than four installments, not including
24 a down payment, and to whom the obligation is initially
25 payable, either on the face of the note or contract, or by
26 agreement when there is no note or contract. For purposes of
27 this subsection, a person "regularly extends consumer credit"
28 if the person extended credit, other than credit subject to
29 the requirements of 12 C.F.R. §1026.32, more than five times
30 in the preceding calendar year for transactions secured by a
31 dwelling. If a person did not meet those numerical standards
32 in the preceding calendar year, the numerical standards
33 shall be applied to the current calendar year. A person also
34 "regularly extends consumer credit" if, in any twelve-month
35 period, the person originates more than one credit extension

1 that is subject to the requirements of 12 C.F.R. §1026.32 or
2 one or more such credit extensions through a mortgage broker.

3 14. "*Dwelling*" means a residential structure that contains
4 one to four units, whether or not that structure is attached to
5 real property. "*Dwelling*" includes an individual condominium
6 unit, cooperative unit, mobile home, and trailer, if it is used
7 as a residence.

8 15. "*Federally regulated appraisal management company*" means
9 an appraisal management company that is owned and controlled
10 by an insured depository institution, as defined in 12 U.S.C.
11 §1813 and regulated by the office of the comptroller of the
12 currency, the board of governors of the federal reserve system,
13 or the federal deposit insurance corporation.

14 16. "*Federally related transaction regulations*" means
15 regulations established by the comptroller of the currency, the
16 board of governors of the federal reserve system, the federal
17 deposit insurance corporation, or the national credit union
18 administration pursuant to sections 1112, 1113, and 1114 of
19 Tit. XI of the federal Financial Institutions Reform, Recovery,
20 and Enforcement Act, 12 U.S.C. §§3341-3343.

21 17. "*Nonsubstantive reason*" means a reason for imposing
22 discipline against a certified appraiser that is not described
23 in section 543D.17 or a substantially similar provision in the
24 jurisdiction that imposed the discipline, including but not
25 limited to the failure to pay appropriate fees.

26 18. "*Person*" means as defined in section 4.1.

27 19. "*Principal dwelling*" means the primary residence of a
28 consumer. For purposes of this chapter, a consumer may have
29 only one "*principal dwelling*". A vacation or other second home
30 shall not be considered a "*principal dwelling*". However, if
31 a consumer buys or builds a new dwelling that will become the
32 consumer's primary residence within a year or upon completion
33 of the construction, the new residence is considered the
34 "*principal dwelling*" for purposes of this chapter.

35 20. "*Secondary mortgage market participant*" means a guarantor

1 or insurer of mortgage-backed securities, or an underwriter
2 or issuer of mortgage-backed securities. "*Secondary mortgage*
3 *market participant*" only includes an individual investor in a
4 mortgage-backed security if that investor also serves in the
5 capacity of a guarantor, insurer, underwriter, or issuer for
6 the mortgage-backed security.

7 21. "*States*" means the fifty states of the United States,
8 the District of Columbia, and the territories of American
9 Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the
10 United States Virgin Islands.

11 22. "*Substantive reason*" means a reason for imposing
12 discipline against a certified appraiser that is described in
13 section 543D.17 or a substantially similar provision in the
14 jurisdiction that imposed the discipline.

15 23. "*Uniform standards of professional appraisal practice*"
16 means the uniform standards promulgated by the appraisal
17 standards board of the appraisal foundation.

18 Sec. 4. NEW SECTION. 543E.4 **Registration required.**

19 A person shall not directly or indirectly engage in or
20 attempt to engage in business as an appraisal management
21 company or advertise or hold itself out as engaging in or
22 conducting business as an appraisal management company in this
23 state without first registering with the administrator.

24 Sec. 5. NEW SECTION. 543E.5 **Exemptions.**

25 This chapter shall not apply to any of the following:

26 1. A person that exclusively employs appraisers on an
27 employer and employee basis for the performance of appraisals.

28 2. A government body, as defined in section 22.1, subsection
29 1, that performs appraisals or retains appraisers on behalf of
30 the government body.

31 3. A federally regulated appraisal management company.

32 4. A department or division of an entity that provides
33 appraisal management services only to that entity.

34 Sec. 6. NEW SECTION. 543E.6 **Ownership — restrictions and**
35 **requirements.**

1 1. An appraisal management company registered or applying
2 for registration in this state shall not be directly or
3 indirectly owned in whole or in part by a person who has had a
4 license or certificate to act as an appraiser refused, denied,
5 canceled, revoked, or surrendered in lieu of revocation in
6 any state for a substantive reason. An appraisal management
7 company may be directly or indirectly owned in whole or in part
8 by a person who has had a license or certificate to act as an
9 appraiser refused, denied, canceled, revoked, or surrendered
10 in lieu of revocation in a state for a nonsubstantive reason
11 if the license or certificate was subsequently granted or
12 reinstated.

13 2. A person who directly or indirectly owns more than ten
14 percent of an appraisal management company in this state shall
15 be of good moral character, as prescribed by rules adopted by
16 the administrator consistent with applicable federal law and
17 regulations, and shall submit to a background investigation,
18 as prescribed by rules adopted by the administrator consistent
19 with applicable federal law and regulations.

20 Sec. 7. NEW SECTION. 543E.7 Designation of controlling
21 person.

22 1. An appraisal management company registered or applying
23 for registration in this state shall designate a controlling
24 person who shall be the main contact for all communications
25 between the administrator and the appraisal management company,
26 and who shall be responsible for assuring the appraisal
27 management company complies with the provisions of this chapter
28 when performing appraisal management services in connection
29 with real estate located in this state.

30 2. The designated controlling person shall not have had a
31 license or certificate to act as an appraiser refused, denied,
32 canceled, revoked, or surrendered in lieu of revocation in
33 any state for a substantive reason. A designated controlling
34 person may have had a license or certificate to act as an
35 appraiser refused, denied, canceled, revoked, or surrendered

1 in lieu of revocation in a state for a nonsubstantive reason
2 if the license or certificate was subsequently granted or
3 reinstated.

4 3. The designated controlling person shall be of good moral
5 character, as prescribed by rules adopted by the administrator
6 consistent with applicable federal law and regulations, and
7 shall submit to a background investigation, as prescribed by
8 rules adopted by the administrator consistent with applicable
9 federal law and regulations.

10 Sec. 8. NEW SECTION. 543E.8 Registration — application
11 requirements.

12 1. An application for registration as an appraisal
13 management company shall be submitted on a form prescribed by
14 the administrator.

15 2. An application shall at a minimum include the following:

16 a. The name, form of business entity, contact information,
17 and official domicile of the applicant.

18 b. The names and contact information for all persons
19 who directly or indirectly own more than ten percent of the
20 applicant and for the controlling person designated pursuant
21 to section 543E.7, and such additional information the
22 administrator may need to enforce section 543E.6, subsection 1.

23 c. Information as reasonably necessary to establish the size
24 of the applicant's nationwide and Iowa appraiser panels, in
25 accordance with rules adopted by the administrator.

26 d. Certification that the applicant does all of the
27 following:

28 (1) Verifies that appraisers who will perform appraisal
29 assignments concerning real estate located in this state hold a
30 valid, unexpired certificate in good standing as a real estate
31 appraiser issued under chapter 543D.

32 (2) Requires that appraisals provided or coordinated by the
33 applicant comply with the uniform standards of professional
34 appraisal practice and has a system in place to monitor such
35 compliance.

1 (3) Maintains a system to assure that appraisal
2 management services are performed independently and free from
3 inappropriate influence and coercion pursuant to the appraisal
4 independence standards established under section 129E of the
5 federal Truth in Lending Act, including the requirements for
6 the payment of reasonable and customary fees, and pursuant to
7 section 543D.18, subsections 1 and 2, and section 543D.18A.

8 (4) Maintains a system to retain detailed records of all
9 appraisal management services to be performed in this state.

10 (5) Maintains a system to assure that the appraiser selected
11 for an appraisal assignment is independent of the transaction
12 and has the requisite education, expertise, and experience
13 necessary to competently complete the appraisal assignment for
14 the particular market and property type.

15 e. If the applicant is not domiciled in this state, the name
16 and contact information for the applicant's agent for service
17 of process in this state and consent to service of process upon
18 the secretary of state in any action or proceeding against the
19 applicant arising out of a transaction or operation connected
20 with or incidental to services performed by the applicant as
21 a registered appraisal management company in this state or
22 involving real property located in this state.

23 f. Any additional information that is reasonably needed for
24 the administrator to implement the provisions of this chapter
25 and assure that the applicant is eligible for registration
26 under this chapter.

27 Sec. 9. NEW SECTION. 543E.9 Registration renewal and annual
28 certification.

29 1. A registration issued under this chapter shall be valid
30 for one year as provided by rule.

31 2. An application to renew registration shall be submitted
32 in the form and in the manner prescribed by the administrator.
33 The administrator may further require periodic disclosures of
34 changes impacting registration, such as a change in ownership
35 or the designated controlling person.

1 3. An application to renew registration shall contain the
2 information described in section 543E.8, subsection 2.

3 4. A registration issued under this chapter shall lapse if
4 not timely renewed, in accordance with rules adopted by the
5 administrator.

6 5. A person holding a lapsed registration shall not directly
7 or indirectly engage in or attempt to engage in business as an
8 appraisal management company or advertise or hold itself out as
9 engaging in or conducting business as an appraisal management
10 company in this state until the registration has been
11 reinstated under the process prescribed by the administrator
12 by rule.

13 Sec. 10. NEW SECTION. **543E.10 Fees.**

14 1. The administrator shall by rule establish fees for
15 registration, renewal, reinstatement, and such additional fees
16 as are reasonably necessary for the administration of this
17 chapter. The fees shall be established in consideration of
18 the costs of administering this chapter and the actual cost
19 of the specific service to be provided or performed. The
20 administrator shall periodically review and adjust the schedule
21 of fees as needed to cover projected expenses.

22 2. Except as provided in subsection 3, all fees collected
23 under this chapter shall be deposited into the department of
24 commerce revolving fund created in section 546.12 and are
25 appropriated to the administrator to be used to administer
26 this chapter including but not limited to purposes such as
27 examinations, investigations, and administrative staffing.
28 Notwithstanding section 8.33, moneys appropriated pursuant to
29 this subsection are not subject to reversion to the general
30 fund of the state.

31 3. The administrator shall also collect the appraisal
32 management company national registry fee from each appraisal
33 management company seeking to register in this state and from
34 federally regulated appraisal management companies operating
35 in this state. The administrator shall transfer all appraisal

1 management company national registry fees collected by the
2 administrator to the appraisal subcommittee.

3 Sec. 11. NEW SECTION. 543E.11 **Appraiser, appraisal review,**
4 **and employee restrictions.**

5 1. The following individuals shall not have had a license or
6 certificate to act as an appraiser refused, denied, canceled,
7 revoked, or surrendered in lieu of revocation in any state
8 for a substantive reason, but may have had a license or
9 certificate to act as an appraiser refused, denied, canceled,
10 revoked, or surrendered in lieu of revocation in a state for
11 a nonsubstantive reason if the license or certificate was
12 subsequently granted or reinstated:

13 a. An appraiser in an appraisal management company's
14 appraiser panel who performs or may perform appraisals of real
15 estate located in this state.

16 b. An employee, independent contractor, or other agent of an
17 appraisal management company who performs an appraisal review
18 of an appraisal of real estate located in this state.

19 c. An employee, independent contractor, or other agent of an
20 appraisal management company who, with respect to real estate
21 located in this state, has any responsibility for assigning
22 appraisers to specific appraisal assignments, providing quality
23 control for appraisal reports, or communicating with appraisers
24 regarding potential appraisal report deficiencies.

25 2. An appraiser who on behalf of an appraisal management
26 company performs an appraisal review of an appraisal of a
27 dwelling located in this state shall comply with the review
28 provisions of the uniform standards of professional appraisal
29 practice, and shall be certified as an appraiser under the laws
30 of any state, except that a review appraiser shall be certified
31 under chapter 543D if such certification is required by any
32 applicable state or federal law, rule, or regulation, or to the
33 extent the review appraiser provides the review appraiser's own
34 opinion of value, concurs with the original appraiser's opinion
35 of value, or disagrees with the original appraiser's opinion of

1 value.

2 3. An appraisal management company may rely on the national
3 registry of appraisers of the appraisal subcommittee for
4 purposes of verifying compliance with this section.

5 Sec. 12. NEW SECTION. 543E.12 Adherence to standards —
6 mandatory reporting.

7 1. An appraisal management company shall direct all
8 appraisers it requests to perform appraisal assignments
9 involving real estate located in this state to comply with the
10 uniform standards of professional appraisal practice, including
11 the competency rule.

12 2. An appraisal management company shall have an appraisal
13 review system in place to monitor compliance with subsection 1.

14 3. An appraisal management company that has a reasonable
15 basis to believe an appraiser has materially failed to
16 comply with the uniform standards of professional appraisal
17 practice or has otherwise materially violated chapter 543D or
18 this chapter shall refer the matter to the administrator in
19 conformance with applicable federal law and regulations. An
20 appraisal management company that has a reasonable basis to
21 believe another appraisal management company is failing to
22 comply with the provisions of this chapter shall refer the
23 matter to the administrator in conformance with section 272C.9,
24 subsection 2.

25 4. An appraiser who is employed by or is on the appraiser
26 panel of an appraisal management company registered under this
27 chapter who has a reasonable basis to believe the appraisal
28 management company is in violation of this chapter shall refer
29 the matter to the administrator.

30 Sec. 13. NEW SECTION. 543E.13 Recordkeeping — payment.

31 1. An appraisal management company shall maintain a
32 detailed record of each service request the appraisal
33 management company receives involving real estate located in
34 this state and the identity of the appraiser who performs the
35 appraisal assignment. All such records shall be maintained for

1 at least five years after the request is sent by the appraisal
2 management company to the appraiser or the completion of the
3 appraisal report, whichever period expires later. An appraisal
4 management company shall maintain such additional records
5 regarding appraisal management services performed in this state
6 as the administrator may specify by rule.

7 2. An appraisal management company shall, except in the
8 case of breach of contract or substandard performance of
9 an appraisal service, make payment to an appraiser for the
10 completion of an appraisal service within forty-five days
11 of the date on which the appraiser transmits or otherwise
12 provides the results of the completed appraisal service to the
13 appraisal management company. An appraisal management company
14 shall maintain detailed records to verify that all payments to
15 appraisers have been made in compliance with this section. All
16 such records shall be maintained for at least five years after
17 payment is made or the completion of the appraisal service,
18 whichever is later.

19 Sec. 14. NEW SECTION. 543E.14 Appraiser independence —
20 compensation.

21 1. An appraisal management company registered under
22 this chapter shall take all reasonable steps to assure
23 that appraisals are conducted independently and free from
24 inappropriate influence or coercion pursuant to the appraisal
25 independence standards established under section 129E of the
26 federal Truth in Lending Act, including the requirements for
27 the payment of reasonable and customary fees, and in compliance
28 with the independence, objectivity, and impartiality provisions
29 of section 543D.18, subsections 1 and 2, and section 543D.18A.

30 2. An appraisal management company shall compensate
31 appraisers at a rate that is reasonable and customary for
32 appraisal services being performed in the market area of the
33 property being appraised in accordance with federal law.

34 Sec. 15. NEW SECTION. 543E.15 Prohibited acts.

35 An appraisal management company registered under this

1 chapter, or an employee, owner, director, controlling person,
2 or other agent of an appraisal management company, shall not
3 do any of the following:

4 1. Require an appraiser to indemnify an appraisal
5 management company or hold an appraisal management company
6 harmless for any liability, damage, losses, or claims arising
7 out of the services performed by the appraisal management
8 company, and not the services performed by the appraiser.

9 2. Alter, modify, or otherwise change a completed appraisal
10 report submitted by an appraiser without the appraiser's
11 written consent.

12 3. Require that an appraiser provide the appraisal
13 management company with the appraiser's digital or electronic
14 signature, seal, or certification, or any password or other
15 form of security intended to prevent persons other than the
16 appraiser from affixing the appraiser's digital or electronic
17 signature, seal, or certification on a completed appraisal
18 report.

19 4. Remove an appraiser from an appraiser panel without prior
20 written notice that identifies the basis for removal. Upon
21 request or in conjunction with an examination, an appraisal
22 management company shall forward to the administrator copies
23 of such notices issued to an appraiser located or certified in
24 Iowa.

25 5. Require an appraiser to modify any aspect of an appraisal
26 report other than through a request permitted under section
27 543D.18A, subsection 4.

28 6. Require an appraiser to perform an appraisal assignment
29 if the appraiser has notified the appraisal management company
30 that, in the appraiser's own professional judgment, any of the
31 following apply:

32 a. The appraiser does not have the necessary competence or
33 expertise for the specific geographic area or type of property
34 to be appraised.

35 b. The timeframe under which the appraisal assignment is

1 to be performed is insufficient for the appraiser to meet all
2 relevant legal and professional obligations.

3 7. Require, either knowingly or through lack of reasonable
4 diligence, an appraiser to take any action that would violate
5 the uniform standards of professional appraisal practice, or
6 any provision of chapter 543D or rule adopted pursuant thereto.

7 8. Prohibit an appraiser from disclosing the fee paid to the
8 appraiser for appraisal services in the appraisal report.

9 9. Prohibit or inhibit lawful communications between the
10 appraiser and the lender, a real estate salesperson or broker,
11 or any other person from whom the appraiser, in the appraiser's
12 own professional judgment, believes information obtained would
13 be relevant to the appraisal assignment.

14 10. Condition payment of all or any part of an appraiser's
15 fee or the appraisal management company's fee on a particular
16 outcome, including but not limited to any of the following
17 outcomes:

18 a. A loan closing.

19 b. A specific dollar amount in an appraisal report.

20 c. An outcome that would violate section 543D.18, subsection
21 2, or section 543D.18A, subsection 1.

22 11. Engage in any acts or practices that violate section
23 543E.14.

24 Sec. 16. NEW SECTION. 543E.16 Display of registration
25 number.

26 An appraisal management company registered under this
27 chapter shall be issued a unique registration number and shall
28 include its registration number in any record, such as an
29 engagement letter, order, or agreement, in which the appraisal
30 management company contracts with an appraiser to perform an
31 appraisal assignment involving real estate located in this
32 state.

33 Sec. 17. NEW SECTION. 543E.17 Grounds for disciplinary
34 action.

35 1. After notice and hearing, the administrator may

1 revoke, suspend, or refuse to issue, renew, or reinstate
2 a registration; reprimand, censure, or limit the scope of
3 practice of any registrant; impose a civil penalty not to
4 exceed ten thousand dollars per violation; require remedial
5 action; or place any registrant on probation; all with or
6 without terms, conditions, or in combinations of remedies, for
7 any one or more of the following reasons:

8 *a.* Fraud or deceit in obtaining registration, which may also
9 result in permanent revocation of the registration.

10 *b.* Dishonesty, fraud, or gross negligence in the provision
11 of appraisal management services.

12 *c.* A violation of this chapter or implementing rules by
13 the appraisal management company or by an employee, owner,
14 director, controlling person, or other agent of the appraisal
15 management company.

16 *d.* Conviction of a felony or other indictable offense, any
17 element of which is dishonesty, deception, or fraud, or is
18 otherwise related to the performance of appraisal management
19 services, under the laws of any state or the United States.

20 *e.* Cancellation, revocation, suspension, or refusal to renew
21 the authority to practice as an appraisal management company,
22 or the acceptance of the voluntary surrender of a registration
23 to practice as an appraisal management company to conclude a
24 disciplinary investigation or action, by any other state, a
25 federal agency, or foreign authority for any cause other than
26 failure to pay appropriate fees in the other jurisdiction.

27 *f.* A violation of section 272C.10.

28 2. When determining whether to initiate a disciplinary
29 proceeding against an appraisal management company based
30 on actions or omissions by an employee, owner, director,
31 controlling person, or other agent of the appraisal management
32 company, the administrator shall take into consideration all
33 of the following:

34 *a.* Whether the appraisal management company took reasonable
35 steps to prevent the violation.

1 *b.* Whether the violation was or could have been discovered
2 by the appraisal management company upon reasonable inquiry.

3 *c.* What steps the appraisal management company took upon
4 discovering the violation.

5 *d.* Whether the violation could have been avoided had the
6 appraisal management company established the systems or other
7 procedures required under this chapter.

8 *e.* Whether the violation is an isolated matter or more
9 systemic to the appraisal management company's performance.

10 Sec. 18. NEW SECTION. 543E.18 **Unlawful practice —**
11 **complaints and investigations — remedies and penalties.**

12 1. If, as the result of a complaint or otherwise, the
13 administrator believes that a person has engaged, or is about
14 to engage, in an act or practice that constitutes or will
15 constitute a violation of this chapter, the administrator may
16 make application to the district court for an order enjoining
17 such act or practice. Upon a showing by the administrator that
18 such person has engaged, or is about to engage, in any such act
19 or practice, an injunction, restraining order, or other order
20 as may be appropriate shall be granted by the district court.

21 2. The administrator may investigate a complaint or
22 initiate a complaint against a person who is not registered
23 under this chapter to determine whether grounds exist to make
24 application to the district court pursuant to subsection 1 or
25 to issue an order pursuant to subsection 3, and in connection
26 with such complaint or investigation may issue subpoenas to
27 compel witnesses to testify or persons to produce evidence
28 consistent with the provisions of section 272C.6, subsection
29 3, as needed to determine whether probable cause exists to
30 initiate a proceeding under this section or to make application
31 to the district court for an order enjoining a violation of
32 this chapter.

33 3. In addition to or as an alternative to making application
34 to the district court for an injunction, the administrator may
35 issue an order to a person who is not registered under this

1 chapter to require compliance with this chapter and may impose
2 a civil penalty against such person for any violation specified
3 in subsection 4 in an amount up to ten thousand dollars for
4 each violation. All civil penalties collected pursuant to this
5 section shall be deposited in the housing trust fund created
6 in section 16.181. An order issued pursuant to this section
7 may prohibit a person from applying for registration under this
8 chapter or certification or registration under chapter 543D.

9 4. The administrator may impose a civil penalty against a
10 person who is not registered under this chapter for any of the
11 following:

12 a. A violation of section 543E.4.

13 b. A violation of section 543D.18A, subsection 1.

14 c. Fraud, deceit, or deception, through act or omission,
15 in connection with an application for registration under this
16 chapter.

17 5. The administrator, before issuing an order under
18 this section, shall provide the person written notice and
19 the opportunity to request a hearing. The hearing must be
20 requested within thirty days after receipt of the notice
21 and shall be conducted in the same manner as provided for
22 disciplinary proceedings involving a registrant under this
23 chapter.

24 6. A person aggrieved by the imposition of a civil penalty
25 under this section may seek judicial review pursuant to section
26 17A.19.

27 7. If a person fails to pay a civil penalty within thirty
28 days after entry of an order imposing the civil penalty, or
29 if the order is stayed pending an appeal, within ten days
30 after the court enters a final judgment in favor of the
31 administrator, the administrator shall notify the attorney
32 general. The attorney general may commence an action to
33 recover the amount of the penalty, including reasonable
34 attorney fees and costs.

35 8. An action to enforce an order under this section may be

1 joined with an action for an injunction.

2 Sec. 19. NEW SECTION. **543E.19 Surety bond.**

3 1. The administrator shall require that an appraisal
4 management company be covered by a surety bond in the amount of
5 twenty-five thousand dollars.

6 2. The surety bond shall be in a form as prescribed by
7 the administrator. The administrator may, pursuant to rule,
8 determine requirements for such surety bonds as are necessary
9 to accomplish the purposes of this chapter. The requirements
10 for a surety bond shall only relate to liabilities, damages,
11 losses, or claims arising out of the appraisal management
12 services performed by the appraisal management company
13 involving real estate located in this state. The bond shall
14 provide that a person having a claim against an appraisal
15 management company may bring suit directly on the bond or the
16 administrator may bring suit on behalf of such person.

17 Sec. 20. NEW SECTION. **543E.20 Additional administrator**
18 **authority.**

19 1. The administrator is vested with broad administrative
20 authority to administer, interpret, and enforce this chapter
21 and to promulgate rules implementing this chapter.

22 2. In addition to the duties and powers conferred upon the
23 administrator in this chapter, the administrator shall have
24 the authority to adopt such rules as are reasonably necessary
25 to assure the administrator's registration and supervision
26 of appraisal management companies comply with the minimum
27 requirements of 12 U.S.C. §3352 and related federal laws and
28 regulations, with respect to any of the following:

29 a. Reviewing and approving or denying an appraisal
30 management company's application for initial or renewal
31 registration.

32 b. Examining the books and records of an appraisal
33 management company operating in the state and requiring the
34 appraisal management company to submit reports, information,
35 and documents.

1 *c.* Verifying that the appraisers on an appraisal management
2 company's appraiser panel who perform appraisal assignments in
3 this state hold valid certificates issued under chapter 543D.

4 *d.* Conducting investigations of appraisal management
5 companies to assess potential violations of applicable
6 appraisal-related laws, regulations, rules, or orders.

7 *e.* Disciplining, suspending, terminating, or denying renewal
8 of the registration of an appraisal management company that
9 violates applicable appraisal-related laws, regulations, rules,
10 or orders.

11 *f.* Notwithstanding section 272C.6, subsection 4, reporting
12 an appraisal management company's violation of applicable
13 appraisal-related laws, regulations, rules, or orders, as well
14 as disciplinary and enforcement investigations and actions
15 and other relevant information about an appraisal management
16 company's operations, to the appraisal subcommittee.

17 *g.* Imposing requirements on appraisal management companies
18 that are mandated by federal law and regulations applicable
19 to appraisal management companies that are not exempt under
20 federal law, including any of the following:

21 (1) Registration and supervision requirements.

22 (2) Ownership limitations.

23 (3) Engaging only certified appraisers for federally
24 related transactions in conformity with all applicable
25 federally related transaction regulations.

26 (4) Establishing systems for engaging appraisers who are
27 competent and independent, and who are suited for the appraisal
28 assignments to which they are assigned based on education,
29 expertise, and experience.

30 (5) Directing appraisers to perform appraisal assignments
31 in accordance with the uniform standards of professional
32 appraisal practice.

33 (6) Establishing and complying with processes and controls
34 reasonably designed to ensure appraisal management companies
35 conduct appraisal management services in accordance with the

1 requirements of section 129E(a)-(i) of the federal Truth
2 in Lending Act, 15 U.S.C. §1639e(1)-(i), and regulations
3 thereunder including but not limited to the requirement that
4 appraisers who complete an appraisal in connection with a
5 consumer credit transaction secured by the principal dwelling
6 of the consumer be compensated with a customary and reasonable
7 fee.

8 *h.* Assessing, collecting, and forwarding to the appraisal
9 subcommittee appraisal management company national registry
10 fees from appraisal management companies registered under this
11 chapter and from federally regulated appraisal management
12 companies.

13 3. The administrator may conduct periodic examinations of
14 applicants or registrants under this chapter as reasonably
15 necessary to assure compliance with all or specific provisions
16 of this chapter. All papers, documents, examination reports,
17 and other records relating to such examinations shall be
18 confidential as provided in section 272C.6, subsection 4,
19 except as provided in this section.

20 4. The administrator may adopt rules governing an
21 appraiser's use of associate real estate appraisers while
22 performing appraisal assignments subject to this chapter.
23 Associate real estate appraisers may provide appraisal services
24 under the supervision of a certified appraiser as provided
25 in chapter 543D and associated rules, but shall not be on an
26 appraiser panel of an appraisal management company.

27 5. The administrator may require a national criminal
28 history check through the federal bureau of investigation or,
29 if authorized by federal law or regulation, the nationwide
30 mortgage licensing system and registry, as defined in section
31 535D.3, when conducting background investigations under
32 this chapter. Except as inconsistent with the registry, the
33 following shall apply:

34 *a.* The administrator may require owners and controlling
35 persons who are subject to the background investigation

1 provisions of sections 543E.6 and 543E.7 to provide a full
2 set of fingerprints, in a form and manner prescribed by the
3 administrator. Such fingerprints, if required, shall be
4 submitted to the federal bureau of investigation through the
5 state criminal history repository for purposes of the national
6 criminal history check.

7 *b.* The administrator may also request and obtain,
8 notwithstanding section 692.2, subsection 5, criminal history
9 data for owners and controlling persons who are subject to the
10 background investigation provisions of sections 543E.6 and
11 543E.7. A request for criminal history data shall be submitted
12 to the department of public safety, division of criminal
13 investigation, pursuant to section 692.2, subsection 1.

14 *c.* The administrator shall inform such owners and
15 controlling persons of the requirement of a national criminal
16 history check or request for criminal history data and obtain
17 a signed waiver from the applicant, certificate holder, or
18 registrant prior to requesting the check or data.

19 *d.* The administrator may, in addition to any other fees,
20 charge and collect such amounts as may be incurred by the
21 administrator, the department of public safety, or the
22 federal bureau of investigation in obtaining criminal history
23 information. Amounts collected shall be considered repayment
24 receipts as defined in section 8.2.

25 *e.* Criminal history data and other criminal history
26 information relating to affected owners or controlling
27 persons, or their appraisal management companies obtained
28 by the administrator pursuant to this section shall remain
29 confidential. Such information may, however, be used by
30 the administrator in a registration denial, enforcement, or
31 disciplinary proceeding.

32 Sec. 21. Section 272C.1, subsection 6, Code 2016, is amended
33 by adding the following new paragraph:

34 NEW PARAGRAPH. *ag.* The superintendent of the division
35 of banking of the department of commerce in registering and

1 supervising appraisal management companies pursuant to chapter
2 543E.

3 DIVISION II

4 IOWA REAL ESTATE APPRAISER EXAMINING BOARD — SUPERVISION

5 Sec. 22. Section 543D.2, Code 2016, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 11. “*Superintendent*” means the
8 superintendent of the division of banking of the department of
9 commerce or the superintendent’s designee.

10 Sec. 23. Section 543D.4, subsection 1, Code 2016, is amended
11 to read as follows:

12 1. A real estate appraiser examining board is established
13 ~~within the professional licensing and regulation bureau of the~~
14 banking division of the department of commerce. The board
15 consists of seven members, two of whom shall be public members
16 and five of whom shall be certified real estate appraisers.

17 Sec. 24. Section 543D.5, subsection 1, Code 2016, is amended
18 to read as follows:

19 1. The board shall adopt rules establishing uniform
20 appraisal standards and appraiser certification requirements
21 and other rules necessary to administer and enforce this
22 chapter and its responsibilities under [chapter 272C](#), subject to
23 the superintendent’s supervision and authority under section
24 543D.23. The board shall consider and may incorporate any
25 standards required or recommended by the appraisal foundation
26 or by a federal agency with regulatory authority over appraisal
27 standards or the certification of appraisers for federally
28 related transactions.

29 Sec. 25. Section 543D.5, Code 2016, is amended by adding the
30 following new subsection:

31 NEW SUBSECTION. 5. Notwithstanding any provision to the
32 contrary, the provisions in section 546.10, subsections 6
33 through 12, shall apply to the board and to activities governed
34 under this chapter.

35 Sec. 26. Section 543D.6, subsection 2, Code 2016, is amended

1 to read as follows:

2 2. ~~Fees collected by the board shall be transmitted~~
3 ~~to the treasurer of state who shall deposit the fees in~~
4 ~~the general fund of the state.~~ All fees collected by the
5 board shall be deposited into the department of commerce
6 revolving fund created in section 546.12 and are appropriated
7 to the superintendent on behalf of the board to be used to
8 administer this chapter including but not limited to purposes
9 such as examinations, investigations, and administrative
10 staffing. Notwithstanding section 8.33, moneys retained by
11 the superintendent pursuant to this section are not subject
12 to reversion to the general fund of the state. However,
13 the appraisal management company national registry fees the
14 board collects on behalf of the appraisal subcommittee as
15 defined in section 543E.3 shall be transmitted to the appraisal
16 subcommittee in accordance with federal laws and regulations.

17 Sec. 27. Section 543D.22, subsection 1, Code 2016, is
18 amended to read as follows:

19 1. The board may require a national criminal history check
20 through the federal bureau of investigation for applicants
21 for certification or registration, or for persons certified
22 or registered, under **this chapter** if needed for credibility,
23 to comply with federal law or regulation, or the policies of
24 the appraisal qualification board of the appraisal foundation.
25 The board may alternatively require a national criminal
26 history check through the nationwide mortgage licensing system
27 and registry, as defined in section 535D.3, when conducting
28 background investigations under this section, if authorized by
29 applicable federal law or regulation.

30 Sec. 28. NEW SECTION. **543D.23 Superintendent supervision**
31 **and authority.**

32 1. The superintendent shall supervise the board and manage
33 the board's budget and retained fees. The superintendent may
34 exercise all authority conferred upon the board under this
35 chapter and shall have access to all records and information

1 to which the board has access. In supervising the board, the
2 superintendent shall independently evaluate the substantive
3 merits of actions recommended or proposed by the board which
4 may be anticompetitive and shall have the authority to review,
5 approve, modify, or reject all board actions including but not
6 limited to those taken in connection with any of the following:

- 7 *a.* Initial or reciprocal certification of real estate
8 appraisers, registration of associate real estate appraisers,
9 and temporary practice permits.
- 10 *b.* Disciplinary investigations and proceedings.
- 11 *c.* Investigations and proceedings under section 543D.21.
- 12 *d.* Rulemaking, including orders on petitions for rulemaking.
- 13 *e.* Orders on petitions for declaratory orders or waivers or
14 variances.

15 2. A person aggrieved by any final action of the board taken
16 under this chapter shall not have exhausted administrative
17 remedies until the person has appealed the action to the
18 superintendent and the superintendent has issued a final
19 decision or order.

20 3. The superintendent shall adopt rules to implement this
21 section.

22 Sec. 29. Section 546.3, subsection 1, Code 2016, is amended
23 to read as follows:

24 1. The banking division shall regulate and supervise banks
25 under [chapter 524](#), debt management licensees under chapter
26 533A, money services under [chapter 533C](#), delayed deposit
27 services under [chapter 533D](#), mortgage bankers and brokers
28 under [chapter 535B](#), regulated loan companies under chapter
29 536, ~~and~~ industrial loan companies under [chapter 536A](#), real
30 estate appraisers under chapter 543D, and appraisal management
31 companies under chapter 543E, and shall perform other duties
32 assigned to the division by law. The division is headed by the
33 superintendent of banking who is appointed pursuant to section
34 524.201. The state banking council shall render advice within
35 the division when requested by the superintendent.

1 Sec. 30. Section 546.10, subsection 1, paragraph f, Code
2 2016, is amended by striking the paragraph.

3 Sec. 31. Section 546.10, subsection 5, Code 2016, is amended
4 to read as follows:

5 5. Fees collected under ~~chapters 542, 542B, 543B, 543D,~~
6 ~~544A, 544B, and 544C~~ shall be paid to the treasurer of state
7 and credited to the general fund of the state. All expenses
8 required in the discharge of the duties and responsibilities
9 imposed upon the professional licensing and regulation bureau
10 of the banking division of the department of commerce, the
11 administrator, and the licensing boards by the laws of this
12 state shall be paid from moneys appropriated by the general
13 assembly for those purposes. All fees deposited into the
14 general fund of the state, as provided in ~~this subsection,~~
15 shall be subject to the requirements of ~~section 8.60.~~

16 Sec. 32. EFFECTIVE DATE. This Act takes effect on January
17 1, 2017.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill requires the superintendent of the banking
22 division of the department of commerce to regulate appraisal
23 management companies and modifies provisions applicable to the
24 Iowa real estate appraiser examining board.

25 The bill provides definitions relating to the regulation of
26 appraisal management companies (AMCs).

27 The bill prohibits a person from conducting business or
28 advertising itself as an AMC without first registering with the
29 administrator, defined as the superintendent of banking.

30 The bill requires an AMC to designate a controlling person
31 to be the main contact between the administrator and the AMC
32 and to be responsible for compliance with the bill. The
33 controlling person and any person who owns more than 10 percent
34 of an AMC must be found to be of good moral character and submit
35 to a background investigation.

1 The bill requires that the AMC application for registration
2 and registration renewal contain its contact information,
3 agent for service of process, owners, controlling person,
4 appraiser panel, appraisers, and appraisal management
5 services, information to assure compliance with the uniform
6 standards of professional appraisal practice (USPAP), and
7 any other additional information needed as determined by
8 the administrator. The administrator may require periodic
9 disclosures of changes impacting registration.

10 The bill requires the administrator to establish fees
11 by rule. All fees shall be deposited into the department
12 of commerce revolving fund and are appropriated to the
13 administrator. Appropriated moneys are not subject to
14 reversion to the state general fund.

15 The bill requires an AMC to ensure that its appraisers
16 comply with USPAP and implement a review system to monitor such
17 compliance. An AMC that has a reasonable basis to believe
18 that an appraiser or another AMC has failed to comply with
19 applicable law shall refer the matter to the administrator. An
20 appraiser in the appraiser panel of an AMC who has a reasonable
21 basis to believe the AMC is in violation of the bill shall
22 refer the matter to the administrator.

23 The bill requires an AMC to keep a detailed record of all
24 its appraiser services and the identity of the appraiser who
25 performed the service for at least five years. An AMC must pay
26 an appraiser for the completion of an appraiser service within
27 45 days of completion and keep detailed records of payment for
28 at least five years.

29 The bill requires an AMC to take all reasonable steps to
30 assure that appraisals are conducted independently and without
31 inappropriate influence or coercion pursuant to federal and
32 state law. An AMC must compensate appraisers at a reasonable
33 and customary rate.

34 The bill prohibits an AMC, or an employee or other agent
35 of an AMC, from doing any of the following: requiring an

1 appraiser to indemnify an AMC for liability for the services
2 performed by the AMC; modifying a completed appraisal
3 report without the appraiser's written consent; requiring an
4 appraiser to provide the appraiser's identification or security
5 information to an AMC other than to affix on a completed
6 appraisal report; removing an appraiser from an appraiser
7 panel without written notice; requiring an appraiser to modify
8 an appraiser report other than what is permitted under Code
9 chapter 543D; requiring an appraiser to perform an appraisal
10 if the appraiser notified the AMC that the appraiser does not
11 have the necessary competence or the timeframe is insufficient;
12 requiring an appraiser to violate USPAP or Code chapter 543D
13 or its implementing rules; prohibiting an appraiser from
14 disclosing the appraiser's fee; prohibiting communications
15 relevant to an appraisal; conditioning payment to an appraiser
16 on a loan closing, a specific dollar amount, an outcome that
17 would violate Code section 543D.18(2), or 543D.18A(1); or
18 engaging in any acts or practices that violate Code section
19 543E.14.

20 The bill authorizes the administrator to discipline an AMC
21 for fraud or deceit in obtaining registration, dishonesty, or
22 gross negligence in providing appraisal management services;
23 violating the bill; being convicted of a felony related to
24 fraud or appraisal management services; being disciplined
25 to practice as an AMC in any jurisdiction for a substantive
26 reason; or violating Code section 272C.10. The board may,
27 after notice and hearing, revoke, suspend, or refuse to issue,
28 renew, or reinstate a registration; reprimand, censure, or
29 limit the scope of practice of a registrant; impose a civil
30 penalty of no more than \$10,000 per violation; require remedial
31 action; or place an AMC on probation.

32 The bill allows the administrator to seek an injunction
33 from the district court upon belief that a person has or is
34 about to engage in a violation of the bill. The administrator
35 is authorized to investigate or initiate complaints against

1 nonregistered persons. The administrator is also authorized
2 to issue an order to a person not registered and may impose a
3 civil penalty not to exceed \$10,000 for each violation of Code
4 section 543E.4 or 543D.18A(1), or fraud or deceit in applying
5 for registration. All civil penalties shall be deposited in
6 the housing trust fund created in Code section 16.181.

7 The bill requires an AMC to be covered by a surety bond in
8 the amount of \$25,000 to cover liabilities, damages, losses, or
9 claims arising out of the AMC's appraisal management services
10 in this state.

11 The bill provides the administrator with broad authority
12 to implement the bill and adopt necessary rules. The
13 administrator may also conduct periodic examinations of
14 registrants, adopt rules governing an appraiser's use of
15 associate real estate appraisers, and require criminal history
16 and background investigations.

17 The bill provides the superintendent of banking with
18 supervisory authority over the real estate appraiser board
19 established in Code chapter 543D to regulate real estate
20 appraisers. The superintendent shall independently evaluate
21 the actions of the board and have the authority to review,
22 approve, modify, or reject a board action. The superintendent
23 shall also manage the board's budget and retained fees.

24 The bill makes several changes to current law to provide
25 the superintendent with regulatory authority over AMCs and
26 supervisory authority over the real estate appraiser board.

27 The bill adds the superintendent to the list of defined
28 licensing boards in Code section 272C.1. The bill subjects
29 the real estate appraiser board's rulemaking authority
30 to the supervision of the superintendent in Code section
31 543D.5. The bill applies Code sections 546.10, subsections
32 6 through 12, to the appraiser board in Code section 543D.5,
33 to provide the professional licensing and regulation bureau
34 with regulatory powers over the appraiser board. The bill
35 requires the appraiser board's collected fees to be deposited

1 in the department of commerce revolving fund created in Code
2 section 546.12 and are appropriated to the superintendent
3 on behalf of the board in Code section 543D.6. The bill
4 expands the appraiser board's authority to require background
5 investigations in Code section 543D.22, subsection 1. The
6 bill adds real estate appraisers under Code chapter 543D and
7 AMCs under Code chapter 543E to the list of professions or
8 entities regulated by the banking division in Code section
9 546.3, subsection 1. The bill also makes other conforming Code
10 changes.

11 The bill takes effect January 1, 2017.